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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-240

ST. PAUL FIRE & MARINE INSURANCE COMPANY, et al.,

Defendants-Appellants,

vs.

DAVID M. BARRY, et al.,

Plaintiffs-Appellees.

On Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

MOTION OF BLUE SHIELD ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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Blue Shield Association ("BSA"), a nonprofit association of sixty-nine nonprofit medical prepayment plans located throughout the United States, hereby moves this Court pursuant to Rule 42(3) for leave to file an *amicus curiae* brief in support of the appellants St. Paul Fire & Marine Insurance Company, Aetna Casualty & Surety Co., Hartford Casualty Co. and Hartford Fire Insurance Co., and Travelers Insurance Co. BSA has been refused permission to file an *amicus curiae* brief by one or more parties to this appeal.

I.

THE INTEREST OF BLUE SHIELD ASSOCIATION IN THIS APPEAL

More than 85 million persons in the United States were served by the sixty-nine Blue Shield Plans in both private and government business during 1976. Furthermore, in 1976 alone, Blue Shield Plans paid out more than $8 billion in medical benefits for their subscribers. All Blue Shield Plans belong to the Blue Shield Association, a nonprofit organization which, among other things, administers the various Membership Standards relating to containment of health care costs and other matters.

All Blue Shield Plans are regulated by the states whose citizens they serve. Consequently, innumerable federal courts have held that Blue Shield Plans, or Blue Cross Plans (which are nonprofit hospital prepayment plans), are engaged in the "business of insurance" and regulated by the States within the meaning of the McCarran-Ferguson Act. 15 U.S.C. § 1012(b) (1970). *See, e.g., Travelers Insurance Company v. Blue Cross of Western Pennsylvania*, 481 F.2d 80 (3rd Cir. 1973), *cert. denied*, 414 U.S. 1093 (1973); *Doctors, Inc. v. Blue Cross of Greater Philadelphia*, 1977-1 Trade Cases ¶ 61,420 (3rd Cir. 1977); *Anderson v. Medical Service of the District of Columbia*, 1976-1 Trade Cases ¶ 60,884 (E.D. Va. 1976), *aff'd*, 551 F.2d 304 (4th Cir. 1977); *State of Ohio v. Ohio Medical Indemnity*, 1976-2 Trade Cases ¶ 61,128 (S.D. Ohio 1976).

II.

RELEVANT ISSUES WHICH MAY NOT ADEQUATELY BE PRESENTED BY THE PARTIES TO THIS APPEAL

Because the activities of Blue Shield Plans differ in many respects from those of the Defendants-Appellants and, in particular, from the medical malpractice insurance policies at issue in this case, BSA is concerned that the parties to this appeal may not afford this Court an opportunity to consider the impact of the First Circuit's decision on the 85 million Americans who finance their health care through nonprofit medical prepayment plans. Unlike the commercial insurers involved in this case which are regulated by the states' standard commercial insurance statutes, many Blue Shield Plans are regulated by the states pursuant to special nonprofit medical prepayment statutes usually administered by the state insurance commissioners. *See, e.g.*, N.Y. Insurance Law § 250 *et seq.* (McKinney 1966); Ill.Rev.Stat. 1975, ch. 32, § 551 *et seq.*; Mass.Ann.Laws, Ch. 176B, § 1 *et seq.* (1969). From these special statutes arise several fundamental aspects of Blue Shield Plans which distinguish them from most commercial, profit-oriented insurers. The First Circuit's decision might impair the ability of Blue Shield Plans to control health care costs effectively, one of the distinctive aspects of the Plans. For example, imaginative antitrust plaintiffs' counsel have attempted unsuccessfully in the past to characterize Blue Shield's cost control programs, though regulated by the states, as acts of boycott, coercion or intimidation within the exception to the McCarran-Ferguson Act.

CONCLUSION

In short, the First Circuit's decision may affect several fundamental aspects of Blue Shield's cost containment programs for health care financing. The commercial insurers who are parties to this appeal are not engaged in the nonprofit medical prepayment business. Accordingly, BSA respectfully requests this Court for leave to file an *amicus curiae* brief in support of the appellants.

Respectfully submitted,

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